

MONTANA LEGISLATIVE HISTORY

Chapter 563 ~~19~~ 2001

Bill H 295 S _____ Original bill & history ✓ C

H. Committee on Judiciary

Hearing Date(s) 2-1 ✓ C

2-2 ✓ C

_____ C

_____ C

Date Out _____ C

S. Committee on Judiciary

Hearing Date(s) 3-2 ✓ C

_____ C

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Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	05/03/2001			
(H) Signed by Governor	05/02/2001			
(H) Transmitted to Governor	04/23/2001			
(S) Signed by President	04/21/2001			
(H) Signed by Speaker	04/19/2001			
(C) Sent to Printing	04/17/2001			
(H) Returned from Enrolling	04/16/2001			
(H) Sent to Enrolling	04/13/2001			
(H) 3rd Reading Passed as Amended by Senate	04/13/2001	98	1	
(H) Scheduled for 3rd Reading	04/13/2001			
(H) 2nd Reading Senate Amendments Concurred	04/12/2001	97	2	
(H) Scheduled for 2nd Reading	04/12/2001			
(S) Returned to House with Amendments	03/28/2001			
(S) 3rd Reading Concurred	03/28/2001	46	2	
(S) Scheduled for 3rd Reading	03/28/2001			
(S) 2nd Reading Concurred on Voice Vote	03/27/2001	47	1	
(S) Scheduled for 2nd Reading	03/27/2001			
(S) 2nd Reading Passed Consideration	03/26/2001			
(S) Scheduled for 2nd Reading	03/26/2001			
(S) Scheduled for 2nd Reading	03/24/2001			
(S) Committee Report--Bill Concurred as Amended	03/22/2001			(S) Judiciary
(C) Sent to Printing	03/22/2001			
(S) Committee Executive Action--Bill Concurred as Amended	03/22/2001	5	4	(S) Judiciary
(S) Hearing Canceled	03/20/2001			(S) Judiciary
(S) Rereferred to Committee	03/08/2001			(S) Judiciary
(S) Rereferred to Committee	03/05/2001			(S) Finance
(S) Motion Carried	03/05/2001			
(S) 2nd Reading Concurred	03/05/2001	26	23	
(S) Scheduled for 2nd Reading	03/05/2001			
(S) Committee Report--Bill Concurred	03/02/2001			(S) Judiciary
(S) Committee Executive Action--Bill Concurred	03/02/2001	8	2	(S) Judiciary
(S) Hearing	03/02/2001			(S) Judiciary
(S) Referred to Committee	02/08/2001			(S) Judiciary
(S) First Reading	02/08/2001			

(H) Transmitted to Senate	02/07/2001			
(H) 3rd Reading Passed	02/07/2001	97	3	
(H) 2nd Reading Passed	02/06/2001	100	0	
(H) Scheduled for 2nd Reading	02/06/2001			
(H) Committee Report--Bill Passed	02/03/2001			(H) Judiciary
(H) Committee Executive Action--Bill Passed	02/02/2001	20	0	(H) Judiciary
(H) Hearing	02/01/2001			(H) Judiciary
(H) Fiscal Note Printed	01/19/2001			
(H) Fiscal Note Signed	01/18/2001			
(H) Fiscal Note Received	01/18/2001			
(C) Introduced Bill Text Available Electronically	01/13/2001			
(H) Fiscal Note Requested	01/13/2001			
(H) Referred to Committee	01/13/2001			(H) Judiciary
(H) First Reading	01/13/2001			
(H) Introduced	01/13/2001			
(C) Draft Delivered to Requester	01/10/2001			
(C) Draft Ready for Delivery	01/09/2001			
(C) Draft in Assembly/Executive Director Review	01/08/2001			
(C) Draft in Final Drafter Review	01/08/2001			
(C) Bill Draft Text Available Electronically	01/08/2001			
(C) Draft in Input/Proofing	01/08/2001			
(C) Draft to Drafter - Edit Review [CMD]	01/06/2001			
(C) Draft in Edit	01/05/2001			
(C) Draft in Legal Review	01/05/2001			
(C) Draft to Requester for Review	01/05/2001			
(C) Draft to Requester for Review	12/29/2000			
(C) Fiscal Note Needed	12/01/2000			
(C) Draft Request Received	12/01/2000			

HOUSE BILL NO. 295
INTRODUCED BY L. JENT

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; MODIFYING THE DEFINITION OF "UNDER THE INFLUENCE"; EXTENDING THE PERIOD FOR WHICH A SENTENCE MAY BE SUSPENDED PENDING CHEMICAL DEPENDENCY TREATMENT; ALLOWING A SENTENCING JUDGE TO RETAIN JURISDICTION OVER A PERSON ORDERED TO COMPLETE CHEMICAL DEPENDENCY TREATMENT FOR 1 YEAR; AND AMENDING SECTIONS 45-5-205, 61-5-205, 61-8-401, 61-8-714, AND 61-8-732, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-205, MCA, is amended to read:

"45-5-205. Negligent vehicular assault -- penalty. (1) A person who negligently operates a motor vehicle, other than a bicycle as defined in 61-1-123, while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided for in 61-8-401(1), and who causes bodily injury to another commits the offense of negligent vehicular assault.

(2) Subject to subsection (3), a person convicted of the offense of negligent vehicular assault shall be fined an amount not to exceed \$1,000 or shall be imprisoned in the county jail for a term not to exceed 1 year, or both, and shall be ordered to pay restitution as provided in 46-18-241.

(3) (a) A person convicted of the offense of negligent vehicular assault who caused serious bodily injury to another shall be fined an amount not to exceed \$10,000 or shall be incarcerated for a term not to exceed 5 years, or both, and shall be ordered to pay restitution as provided in 46-18-241.

(b) If a term of incarceration is imposed, the judge may suspend the term of incarceration upon the condition of payment of any fine imposed and of restitution. If the person does not pay the fine or restitution, the term of incarceration may be imposed."

Section 2. Section 61-5-205, MCA, is amended to read:

"61-5-205. Mandatory revocation of license upon proper authority. The department upon proper authority shall revoke the driver's license or the operating privilege of any driver upon receiving a record of the driver's conviction or forfeiture of bail not vacated of any of the following offenses, when the conviction or

forfeiture has become final:

- (1) negligent homicide resulting from the operation of a motor vehicle;
- (2) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more;
- (3) any felony in the commission of which a motor vehicle is used;
- (4) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;
- (5) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;
- (6) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months; or
- (7) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle."

Section 3. Section 61-8-401, MCA, is amended to read:

"61-8-401. Driving under influence of alcohol or drugs. (1) It is unlawful and punishable, as provided in 61-8-442, 61-8-714, and 61-8-731 through 61-8-734, for a person who is under the influence of:

- (a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;
- (b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;
- (c) any other drug to drive or be in actual physical control of a vehicle within this state; or
- (d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a ~~motor~~ vehicle has been diminished.

(4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the person's

blood or breath drawn or taken within a reasonable time after the alleged act, gives rise to the following inferences:

(a) If there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.04 but less than 0.10, that fact may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.10 or more, it may be inferred that the person was under the influence of alcohol. The inference is rebuttable.

(5) The provisions of subsection (4) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

(6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-410, 61-8-714, 61-8-722, 61-8-731 through 61-8-734, and subsections (1) through (5) of this section, with the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties provided in the ordinance.

(7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."

Section 4. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense.

(1) A person convicted of a violation of 61-8-401 shall be punished by imprisonment for not less than 24 consecutive hours or more than 6 months and shall be punished by a fine of not less than \$100 or more than \$500. The initial 24 hours of the imprisonment term must be served in the county jail and may not be served under home arrest. The mandatory imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being. Except for the initial 24 hours of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to ~~6 months~~ 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the defendant.

(2) On a second conviction, the person shall be punished by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days or more than 6 months. At least 48 hours of the imprisonment

term must be served consecutively in the county jail and may not be served under home arrest. Three days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being. Except for the initial 3 days of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to ~~6 months~~ 1 year pending successful completion of a chemical dependency treatment program by the defendant.

(3) On the third conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than \$500 or more than \$1,000. At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not be served under home arrest. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended. The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the defendant."

Section 5. Section 61-8-732, MCA, is amended to read:

"61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- assessment, education, and treatment required. (1) In addition to the punishments provided in 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a violation of 61-8-401 or 61-8-406 shall complete:

- (a) a chemical dependency assessment;
- (b) a chemical dependency education course; and
- (c) on a second or subsequent conviction for a violation of 61-8-401 or 61-8-406 or as required by subsection (8) of this section, chemical dependency treatment.

(2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

(3) The chemical dependency assessment and the chemical dependency education course must be completed at a treatment program approved by the department of public health and human services and must be conducted by a certified chemical dependency counselor. The defendant may attend a treatment program of the defendant's choice as long as the treatment services are provided by a certified chemical dependency counselor. The defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment.

(4) The assessment must describe the defendant's level of addiction, if any, and contain a recommendation as to education, treatment, or both. A defendant who disagrees with the initial assessment may, at the defendant's cost, obtain a second assessment provided by a certified chemical dependency counselor or a program approved by the department of public health and human services.

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(6) Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or treatment program. If the defendant fails to attend the education course or treatment program, the counselor shall notify the court of the failure.

(7) A court or counselor may not require attendance at a self-help program other than at an "open meeting", as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs.

(8) Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

(b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional ~~6 months~~ 1 year.

(10) Notwithstanding 46-18-201(2), whenever a judge suspends a sentence imposed under 61-8-714 and orders the person to complete chemical dependency treatment under this section, the judge retains jurisdiction to impose any suspended sentence for up to 1 year."

- END -

FISCAL NOTE

Bill #:	HB0295	Title:	Revise laws governing driving under the influence
Primary Sponsor:	Larry Jent	Status:	As Introduced

Sponsor signature	Date	Chuck Swysgood, Budget Director	Date
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Fiscal Summary

	<u>FY2002 Difference</u>	<u>FY2003 Difference</u>
Expenditures:	0	0
Revenue:	0	0
Net Impact on General Fund Balance:	0	0

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached		X	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

1. HB 295 revises the penalty for first, second and third offense for driving under the influence of alcohol or drugs. These offenses are misdemeanors and the statutes do not establish a provision for supervision of these offenders by the Department of Corrections Probation and Parole Bureau. Therefore, this legislation has no fiscal impact for the Department of Corrections.
2. There is no fiscal impact to the Department of Justice.
3. There is no fiscal impact to the Department of Public Health and Human Services.
4. There is no fiscal impact to the Judiciary.
5. There is no fiscal impact to the Montana Association of Counties.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on February 1, 2001 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Bill Eggers (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Steven Gallus (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 233 - 1-25-01**
HB 295 - 1-25-01
HB 250 - 1-25-01

HEARING ON HB 295

Sponsor: Rep. Larry Jent, HD 29, Bozeman said the reasons for the Bill are two-fold. In other sessions the Legislature passed a law mandating not only alcohol evaluation for convicted drunk drivers, but for treatment, particularly for 2nd offenses.

The reason for increasing the period that the judge may supervise a defendant from six months to one year is, it takes that long if they don't complete the treatment that was ordered.

The second change the bill makes is in the use of the words "vehicle" versus "motor vehicle". A vehicle can be a snowmobile and several other things. A motor vehicle may or may not be a snowmobile depending on whoever the judge is that is sitting on the motion to dismiss.

Proponents: Pam Bucy, Assistant Attorney General.

Opponents: None

Questions from Committee Members and Responses: Reps. Peterson, Shockley to Rep. Jent.

{Tape : 4; Side : B; Approx. Time Counter : 0.1 - 29.8}

Closing by Sponsor: Rep. Jent closed the Hearing on HB 295.

EXECUTIVE ACTION ON HB 262

Rep. Wolery passed out EXHIBIT(juh26a28)

Motion: REP. CLARK moved that HB 262 DO PASS. #1

Motion: REP. CLARK moved that HB 262 BE AMENDED. #2
EXHIBIT(juh26a29)

Discussion: Reps. Clark, Holden, Younkin, Newman.

Vote: Clark amendment motion #2 failed 8-10 with Reps. Shockley, Laszloffy, Adams, Holden, Noennig, Peterson, Rice, Thomas, Wolery and Younkin voting no.

Motion: REP. YOUNKIN moved that HB 262 BE AMENDED. #3

Discussion: Reps. Younkin, Laszloffy, Newman, Rice, Clark, Peterson.

HOUSE OF REPRESENTATIVE
ROLL CALL

JUDICIARY

COMMITTEE

DATE 2-1-01

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. JIM SHOCKLEY, CHAIR	✓		
REP. JEFF LASZLOFFY, V.C.	✓		
REP. PAUL CLARK, V.C.	✓		
REP. DARREL ADAMS	✓		
REP. GILDA CLANCY			
REP. AUBYN CURTISS			
REP. BILL EGGERS	✓		
REP. STEVE GALLUS			
REP. GAIL GUTSCHE	✓		
REP. CHRISTOPHER HARRIS			
REP. LINDA HOLDEN	✓		
REP. JOAN HURDLE	✓		
REP. JEFF MANGAN	✓		
REP. BRAD NEWMAN	✓		
REP. MARK NOENNIG	✓		
REP. KEN PETERSON	✓		
REP. DIANE RICE	✓		
REP. BILL THOMAS	✓		
REP. MERLIN WOLERY	✓		
REP. CINDY YOUNKIN	✓		

***MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER**

DATE 2-1-01

BILL NO. NB 295

SPONSOR(S) Rep. Gent

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
POI			
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Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

S:\visitor register.fm

Motion: REP. NOENNIG moved that HB 202 DO PASS AS AMENDED. #14

Discussion: Reps. Noennig, Gutsche, Clancy, Laszloffy, Newman, Mangan, Shockley.

Vote: Motion #14 failed on a tie vote 10-10.

{Tape : 5; Side : A; Approx. Time Counter : 0.1 - 12.0}

Motion/Vote: REP. MANGAN moved that HB 202 BE TABLED. #15.
Motion carried unanimously 20-0.

EXECUTIVE ACTION ON HB 295

Motion: REP. PETERSON moved that HB 295 DO PASS. #16

Discussion: Rep. Shockley.

Vote: Motion carried unanimously 20-0.

{Tape : 5; Side : A; Approx. Time Counter : 9.6 - 16.9}

HOUSE OF REPRESENTATIVE
ROLL CALL

JUDICIARY

COMMITTEE

DATE 2-07-01

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. JIM SHOCKLEY, CHAIR	✓		
REP. JEFF LASZLOFFY, V.C.	✓		
REP. PAUL CLARK, V.C.	✓		
REP. DARREL ADAMS	✓		
REP. GILDA CLANCY	✓		
REP. AUBYN CURTISS			✓
REP. BILL EGGERS	✓		
REP. STEVE GALLUS			✓
REP. GAIL GUTSCHE	✓		
REP. CHRISTOPHER HARRIS			✓
REP. LINDA HOLDEN	✓		
REP. JOAN HURDLE	✓		
REP. JEFF MANGAN	✓		
REP. BRAD NEWMAN	✓		
REP. MARK NOENNIG	✓		
REP. KEN PETERSON	✓		
REP. DIANE RICE	✓		
REP. BILL THOMAS	✓		
REP. MERLIN WOLERY	✓		
REP. CINDY YOUNKIN	✓		

House of Representatives

Roll Call Vote

JUDICIARY

COMMITTEE

DATE 2-02-01 Bill NO. NB 295 NUMBER #16MOTION: Rep. Peterson moved Do Pass
Motion carried unanimously 20-0

Name	AYE	NO
Rep. Jim Shockley, Chairman	✓	
Rep. Jeff Laszloffy, Vice Chair Majority	✓	
Rep. Paul Clark, Vice Chair Minority	✓	
Rep. Darrel Adams	✓	
Rep. Gilda Clancy	✓	
Rep. Aubyn Curtiss	✓	
Rep. Bill Eggers	✓	
Rep. Steve Gallus	✓	
Rep. Gail Gutsche	✓	
Rep. Christopher Harris	✓	
Rep. Linda Holden	✓	
Rep. Joan Hurdle	✓	
Rep. Jeff Mangan	✓	
Rep. Brad Newman	✓	
Rep. Mark Noennig	✓	
Rep. Ken Peterson	✓	
Rep. Diane Rice	✓	
Rep. Bill Thomas	✓	
Rep. Merlin Wolery	✓	
Rep. Cindy Younkin	✓	



HOUSE STANDING COMMITTEE REPORT

February 2, 2001

Page 1 of 1

Mr. Speaker:

We, your committee on **Judiciary** report that **House Bill 295** (first reading copy - white) do
pass.

Signed.

Representative Jim Shockley, Chair

- END -

Committee Vote:
Yes 20, No 0.

271518SC.hdc

2/3/01
3:55
J.S.

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on March 2, 2001
at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 256, HB 174, HB 295,
2/26/2001
Executive Action: HB 119, HB 256, HB 174, HB 295
HB 182

HEARING ON HB 256

Sponsor: REP. CINDY YOUNKIN, HD 28, BOZEMAN

Proponents: George & Sherri Hoffman
John Connor, MT County Attorneys Association

Opponents: Mike Barrett, Representing Himself

CHAIRMAN GROSFIELD asked why the age of 22 is used. **REP. JENT** said this comes from the exact copy of the deferred sentence standard in the possession statute making it consistent.

CHAIRMAN GROSFIELD asked if this would be used in an incident with more than one charge. **REP. JENT** said there cannot be a paraphernalia charge standing alone because of the intent requirement.

Closing by Sponsor:

REP. LARRY JENT, HD 29, BOZEMAN, felt this statute needed to be changed to allow city justices and peace court judges clear direction as to whether they should or should not give a deferred sentence in paraphernalia cases with young people.

HEARING ON HB 295

Sponsor: **REP. LARRY JENT, HD 29, BOZEMAN,**

Proponents: **Pam Bucy, Assistant Attorney General**
Ken Hoovestol, Montana Snowmobile Assoc.

Opponents: **None**

Opening Statement by Sponsor:

REP. LARRY JENT, HD 29, BOZEMAN, handed out definitions of motor vehicles **EXHIBIT(jus48a03)**. He said this bill standardizes the use of the words motor vehicle and vehicle through the D.U.I. laws whereas before they were used interchangeably. He said this bill also provides when a judge suspends a sentence imposed, the penalty statute for a D.U.I., and orders the offender to complete dependency treatment, the judge would have jurisdiction to impose any portion of that suspended sentence for a year. He felt this was necessary because the treatment ordered by the judge takes longer than six months and it is important to lengthen the treatment. He pointed out vehicles other than traditional vehicles such as snowmobiles and four-wheelers that are effected by this bill. He added this bill strikes the word motor modifying vehicle, which would enable law enforcement to get around the ambiguities of D.U.I. offenders.

Proponents' Testimony:

Pam Bucy, Assistant Attorney General, said this bill changes the definition in the statutes to vehicle rather than motor vehicle, which would be helpful in D.U.I. cases. She pointed out this

bill expands the period for suspended sentence to one year and this is important to prosecutors due to the treatment involved. She felt these were important changes to the bill and she urged a do concur recommendation from the committee.

Ken Hoovestol, Montana Snowmobile Assoc., talked about the trial systems used by motor vehicles and how this can be effective pertaining to this bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. HALLIGAN asked if the date of sentence is up to one year from the date of the sentencing. **REP. JENT** said the date sentence is pronounced to be one year.

SEN. HALLIGAN said that the record should reflect that and it shouldn't attempt to allow a judge any additional suspension time beyond the total time of one year that is allowed. **REP. JENT** agreed that this was correct.

SEN. GRIMES asked if there are certain definitions of vehicles or does this pertain to anything a person operates. **REP. JENT** mentioned the handout of definitions and explained the motor vehicles definition. He pointed out that if it is not drawn by animal power or is on a track like railroads and if not a bicycle then it is a vehicle.

SEN. JERRY O'NEIL asked what the determent would be if the sentence was two years instead of one year. **REP. JENT** believed that one year was adequate.

SEN. HALLIGAN asked if a snowmobile would have to be driven on a public highway to have the same standards. **REP. JENT** answered yes, the person commits the offense of a D.U.I. when operating a vehicle upon the ways of the state open to the public with this bill.

{Tape 2; Side A}

SEN. HALLIGAN wondered how trails with snowmobiles are a way opened to the public. **REP. JENT** said the definition could be found in Title 61. He said there is a jury instruction that defines ways open to the public and it is quoted in the statute in doing so.

CHAIRMAN GROSFIELD clarified the distinction of vehicles pertaining to snowmobiles and public highway, which is the entire width between the boundary lines of every publically maintained way. He said that some of these snowmobile trails are maintained by clubs not publically. **REP. JENT** didn't think a snowmobile trail in the woods maintained by a club would be considered a public highway. **Ken Hoovestol** said that statutorily the trail system, under Montana law, says open to the public and there could be an interpretation difference.

SEN. GRIMES said that a privately maintained un-posted roadway, which is commonly used by the public could be deciphered as a public access. **Ken Hoovestol** agreed that roads maintained for general public would be a public way.

SEN. GRIMES said he didn't feel the intent of this bill was clear. **REP. JENT** pointed out the definitions of the public way and said they need to decipher if it fits the intent of the bill.

SEN. HALLIGAN said it sounded as if a groomed trail that is different than a logging road needs to be clarified. **REP. JENT** said that is one of the items the committee would need to decide.

CHAIRMAN GROSFIELD talked about a similar bill that was tabled last session in the House and asked for background of that bill. **Ken Hoovestol** said the committee raised the issue of verifying the alcohol content due to the breathalyzer test. He said that the offenders would travel back into town to use the proper breathalyzer test instead of doing the test while on the trail and could possibly sober up by then.

CHAIRMAN GROSFIELD asked if the preference would be for any groomed snowmobile trails. **Ken Hoovestol** said no, the preference would be to exclude groomed trails except if they are on a public roadway or cross a public roadway.

Closing by Sponsor:

REP. LARRY JENT, HD 29, BOZEMAN, summarized the bill and said it is needed to insure the safety of pedestrians and snowmobilers. He added that no fiscal impact would effect the state or the local governments because the treatment is paid for by the offender.

EXECUTIVE ACTION ON HB 119

Discussion:

SEN. HALLIGAN agreed with the motion and added the next session will probably be working on the section of the codes if this bill passes.

Vote: Substitute Motion **carried unanimously**.

CHAIRMAN GROSFIELD mentioned changing 45-9-102 to be consistent with this bill along with the changes needed in the title of the bill.

Motion/Vote: SEN. O'NEIL moved that HB 174 BE AMENDED by making consistent with the substitute motion. **Motion carried unanimously**.

Motion/Vote: SEN. HALLIGAN moved that HB 174 BE CONCURRED IN AS AMENDED. **Motion carried unanimously**.

{Tape 3; Side A}

EXECUTIVE ACTION ON HB 295

Discussion:

SEN. O'NEIL liked the bill the way it was and added he didn't agree with the snowmobiles being on public trails.

CHAIRMAN GROSFIELD asked what about groomed trails. SEN. O'NEIL said that sounds fine and if it was drafted by a group then it shouldn't be included with this bill.

CHAIRMAN GROSFIELD pointed out areas in West Yellowstone dealing with trails used by snowmobilers.

SEN. O'NEIL felt the bill was as inclusive as it can get and snowmobilers would have to travel on public access roads to get to the destination. He added if the bill was amended more then it would effect private properties.

SEN. HALLIGAN said this bill includes private property and the issue deals with a groomed trail that isn't covered.

CHAIRMAN GROSFIELD mentioned these trails and there may be no grooming of trails and those areas would not come into this bill. Snowmobilers would have to go through these areas to get to the trails and that is the issue to be clarified.

SEN. GRIMES clarified the current law dealing with roadways.

CHAIRMAN GROSFIELD said it wouldn't help clarify this bill for the public.

SEN. O'NEIL felt the definition would include the snowmobile trails and the bill should be left as is.

CHAIRMAN GROSFIELD suggested to prepare an amendment that the committee could work on.

SEN. GRIMES felt the first part of the bill could be struck and then deal with the second half of the bill on the floor.

SEN. HOLDEN didn't agree with these discussions due to the issues of the trails. He felt if the word "motor" was removed then it would open up difficulties.

Motion/Vote: **SEN. HOLDEN** moved that **HB 295 BE TABLED**. Motion failed with **SEN. HOLDEN** voting yes.

Motion/Vote: **SEN. O'NEIL** moved that **HB 295 BE CONCURRED IN**. Motion carried 7-2 with **SEN. HOLDEN** and **CHAIRMAN GROSFIELD** voting no.

EXECUTIVE ACTION ON HB 182

Motion: **SEN. O'NEIL** moved that **HB 182 BE POSTPONED INDEFINITELY**.

Discussion:

SEN. GRIMES pointed out the issues of the bill dealing with new judges. He agreed with postponing of this bill.

Vote: Motion that **HB 182 BE POSTPONED INDEFINITELY** carried 6-3 with **SEN. DOHERTY**, **SEN. HALLIGAN** and **SEN. PEASE** voting no.

- 61-1-412. Flag vehicle.
- 61-1-413. Funeral escort vehicle.
- 61-1-414. Funeral lead vehicle.
- 61-1-415. Funeral procession.

Part 5 — Miscellaneous

- 61-1-501. Mobile home or house trailer.
- 61-1-502. Gross vehicle weight.
- 61-1-503. Suspension.
- 61-1-504. Revocation.
- 61-1-505. Cancellation.
- 61-1-506. Explosives.
- 61-1-507. Flammable liquid.
- 61-1-508. Registration.
- 61-1-509. Certificate of ownership.
- 61-1-510. Declared weight.
- 61-1-511. For hire defined.
- 61-1-512. Ignition interlock device — definition.
- 61-1-513. Manufactured home.
- 61-1-514. Retail sale.

SENATE JUDICIARY

Exhibit No. 3

Date 03/02/01

Bill No. HB 295

Part 1 Vehicles

61-1-101. Definitions. Unless the context indicates otherwise, the words and phrases defined in this chapter have, as used in this title, the meanings respectively ascribed to them in this chapter.

History: En. Sec. 2, Ch. 267, L. 1947; R.C.M. 1947, 31-118; amd. Sec. 1, Ch. 421, L. 1979.

61-1-102. Motor vehicle. "Motor vehicle" means a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state. For the purpose of chapter 3, the term also includes trailers, semitrailers, and house trailers. For the purpose of chapter 3, parts 1 and 2, the term also includes campers. The term does not include a bicycle as defined in 61-1-123.

History: Ap.p. Sec. 6-215, Ch. 187, L. 1965; amd. Sec. 5, Ch. 290, L. 1967; amd. Sec. 119, Ch. 316, L. 1974; amd. Sec. 15, Ch. 74, L. 1975; Sec. 32-3315, R.C.M. 1947; Ap.p. Sec. 4, Ch. 75, L. 1917; re-en. Sec. 1758, R.C.M. 1921; amd. Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758, R.C.M. 1935; amd. Sec. 5, Ch. 72, L. 1937; amd. Sec. 1, Ch. 148, L. 1943; amd. Sec. 1, Ch. 63, L. 1945; amd. Sec. 1, Ch. 115, L. 1953; amd. Sec. 1, Ch. 200, L. 1955; amd. Sec. 1, Ch. 139, L. 1961; amd. Sec. 7, Ch. 127, L. 1969; amd. Sec. 1, Ch. 179, L. 1971; amd. Sec. 1, Ch. 104, L. 1975; Sec. 53-107, R.C.M. 1947; R.C.M. 1947, 32-3315(part), 53-107(part); amd. Sec. 2, Ch. 421, L. 1979; amd. Sec. 2, Ch. 508, L. 1979; amd. Sec. 1, Ch. 715, L. 1991; amd. Sec. 1, Ch. 105, L. 1997.

Cross-References

Retail installment sales — motor vehicle defined, 31-1-202.

Criminal trespass to vehicles, 45-6-202.

Vehicles subject to staggered registration,

61-3-313.

Required motor vehicle insurance,

61-6-301.

61-1-103. Vehicle. "Vehicle" means every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks. However, in chapters 3 and 4, the term means "motor vehicle" as

defined in this part; and in chapter 8, part 4, this term does not include a bicycle as defined in 61-1-123.

History: App. Sec. 3, Ch. 267, L. 1947; amd. Sec. 1, Ch. 291, L. 1973; Sec. 31-119, R.C.M. 1947; App. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 83, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; Sec. 53-133, R.C.M. 1947; R.C.M. 1947, 31-119(a), 53-133(i); amd. Sec. 3, Ch. 421, L. 1979; amd. Sec. 3, Ch. 508, L. 1979; amd. Sec. 1, Ch. 450, L. 1983; amd. Sec. 1, Ch. 99, L. 1985.

61-1-104. Special mobile equipment. (1) "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this section is partial and does not exclude other vehicles that are within the general terms of this section.

(2) For purposes of Title 61, chapter 3, and Title 61, chapter 10, part 2, a motor vehicle or a trailer designed and used to apply fertilizer to agricultural land must be treated as special mobile equipment.

(3) For registration purposes, a log loader must be treated as special mobile equipment, subject to the identification and registration exemptions and regulations in 61-3-431.

History: En. Sec. 2, Ch. 263, L. 1955; amd. Sec. 1, Ch. 153, L. 1975; R.C.M. 1947, 32-2102(j); amd. Sec. 4, Ch. 421, L. 1979; amd. Sec. 1, Ch. 84, L. 1993; amd. Sec. 1, Ch. 314, L. 1995; amd. Sec. 1, Ch. 159, L. 1997.

Cross-References

General assessment day, 15-8-201.

Vehicles subject to staggered registration,
61-3-313.

Special mobile equipment — exemption
from registration, 61-3-431.

Application for dealer's license, 61-4-101.

Service brakes — adequacy, 61-9-302.

Brakes required on all wheels —
exceptions, 61-9-304.

61-1-105. Motorcycle. "Motorcycle" means a motor vehicle having not more than three wheels in contact with the ground and a saddle on which the operator sits or a platform on which he stands and a driving wheel in contact with the ground in addition to the wheels of the vehicle itself. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger. The term does not include a tractor or a bicycle as defined in 61-1-123.

History: En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 83, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; R.C.M. 1947, 53-133(b); amd. Sec. 5, Ch. 421, L. 1979; amd. Sec. 4, Ch. 508, L. 1979.

Cross-References

Headgear required for minor motorcycle
riders, 61-9-417.

Motorcycle noise suppression devices,
61-9-418.

Violation of motorcycle requirements —
penalty, 61-9-518.

61-1-106. Motor-driven cycle. "Motor-driven cycle" means every motorcycle, including every motor scooter, with a motor which produces not to exceed 5 horsepower. The term does not include a bicycle as defined in 61-1-123.

History: En. Sec. 2, Ch. 263, L. 1955; amd. Sec. 1, Ch. 153, L. 1975; R.C.M. 1947, 32-2102(d); amd. Sec. 5, Ch. 508, L. 1979.



SENATE STANDING COMMITTEE REPORT

March 2, 2001

Page 1 of 1

Mr. President:

We, your committee on Judiciary recommend that **House Bill 295** (third reading copy - blue) be concurred in.

Signed: _____

A handwritten signature in cursive script, likely belonging to Senator Lorents Grosfield.

Senator Lorents Grosfield, Chair

To be carried by Senator Duane Grimes

- END -

Committee Vote:

Yes 8, No 2.

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DATE 03/02/01SENATE COMMITTEE ON JUDICIARYBILLS BEING HEARD TODAY: HB 174, HB 256, HB 295**PLEASE PRINT**

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
John Connor	444-2026	MT County Atty Assn	256	X	
Mike Barrett	443 2195	Self; Art, Agency (S) & pay l. informally	256 295		
Sherri Hoffman	388-0911 home 585-3860 4012	Self	256	X	
George Hoffman	388-0911 582-2644	Self - Son Michael	256	X	
Alice J. Allsop	587-7159		256	X	
Allan R Allsop	587-7159		256	X	
Ken Hoovestel	443-1744	Mt. Snowmobile Assn	295	X	
Beda Lovitt	442-7777	MMA	295	X	
Pam Bucy	4-2026	D.O.J.	295	X	
Mark Grathwohl	592-3729	Self			
Pat Bietsch	592-3729	Self			

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY